

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MALIK MILLER,	§
	§
Defendant Below,	§ No. 673, 2011
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware, in and
STATE OF DELAWARE,	§ for New Castle County
	§ Cr. ID 0810020682
Plaintiff Below,	§
Appellee.	§

Submitted: May 25, 2012

Decided: July 3, 2012

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

ORDER

This 3rd day of July 2012, upon consideration of the appellant's opening brief, the State's amended motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant, Malik Miller, filed this appeal from the Superior Court's sentence for a violation of probation (VOP). The State of Delaware has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Miller's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that Miller pled guilty in June 2009 to one count of Assault in the First Degree. The Superior Court sentenced Miller to a total period

of twenty-five years at Level V incarceration to be suspended after serving three years for twenty-two years at Level IV Work Release, to be suspended after serving eight months at Work Release for twenty-one years and four months at Level IV Home Confinement, to be suspended after serving six months at Home Confinement for eighteen months at Level III probation. Miller did not appeal from that sentence. In November 2011, Miller was charged with violating probation after he was involved in a fight at the Level IV Plummer Center. Miller admitted the violation, and the Superior Court sentenced him to six months at Level V incarceration or VOP Center and, upon completion, to restart the Level IV portion of his original sentence. Miller now appeals.

(2) Miller raises four points in his opening brief on appeal. First, he contends that the Superior Court judge had a closed mind because Miller's original conviction was for a violent offense. Second, Miller asserts that facts exist to justify his VOP. Third, Miller suggests that there was no evidence presented to justify the VOP finding. Finally, he contends that the administrative warrant was defective.

(3) We find no merit to Miller's appeal. In a VOP hearing, the State is only required to prove by a preponderance of the evidence that the defendant violated the terms of his probation.¹ A preponderance of evidence means "some competent

¹ *Kurzmann v. State*, 903 A.2d 702, 716 (Del. 2006).

evidence” to “reasonably satisfy the judge that the conduct of the probationer has not been as good as required by the conditions of probation.”² The transcript of the VOP hearing in this case reflects that Miller admitted to the violation. That admission is sufficient evidence to justify the Superior Court’s VOP finding.

(4) Once the Superior Court found Miller in violation of the terms of his probation, it was authorized to require Miller to serve in prison the twenty-years that were suspended in the original sentencing order or any lesser sentence.³ The Superior Court only imposed a six-month prison sentence for Miller’s VOP. Under these circumstances, we find nothing in the record to support Miller’s suggestion that the Superior Court judge sentenced him with a closed mind.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Jack B. Jacobs
Justice

² *Id.* (quoting *Collins v. State*, 897 A.2d 159, 160 (Del. 2006)).

³ *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999).